

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

MOUNT AIRE FARMS OF DELMARVA, INC.^{1/}

Employer

and

GENERAL TEAMSTERS LOCAL UNION 326,
AFFILIATED WITH IBT OF AMERICA, AFL-CIO

Petitioner

Case 5-RC-15076

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{2/}
3. The Petitioner involved claims to represent certain employees of the Employer.^{3/}
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{4/}

All full-time and regular part-time panel operators, pellet operators, grain department operators, clean up personnel, maintenance employees, laboratory technicians, dispatchers, and feed order clerks employed by the Employer at its Frankford, Delaware facility, excluding all other employees, drivers, office clerical employees, guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the

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strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by

**GENERAL TEAMSTERS LOCAL UNION 326,
AFFILIATED WITH IBT OF AMERICA, AFL-CIO**

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **September 14, 2000**.

Dated August 31, 2000

at Baltimore, Maryland

/s/ Albert W. Palewicz
Acting Regional Director, Region 5



1/ The Employer's name appears as amended at the hearing.

2/ Mount Aire Farms of DelMarva, Inc., a Delaware Corporation, is engaged in processing and delivering poultry feed at its Frankford, Delaware location. During the past 12 months, a representative period, Mount Aire Farms of Delmarva purchased and received at its Delaware location, goods and supplies valued in excess of \$50,000 directly from points outside the State of Delaware and is engaged in commerce within the meaning of the National Labor Relations Act.

3/ The parties stipulated that the General Teamsters Local Union 326, a/w IBT of America, AFL-CIO, (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

4/ The Petitioner amended its petition at the hearing to seek the following unit:

All panel operators, pellet operators, grain department employees, clean up personnel and maintenance employees, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

There are 15 employees in the petitioned-for unit, and there is no history of collective bargaining. The Employer contends that an appropriate unit also includes drivers, dispatchers, and the feed order clerk, a total of 38 employees. The parties stipulated that the following individuals employed by the Employer are supervisors within the meaning of Section 2(11) of the Act and are excluded from the bargaining unit: Live Production Manager Bill Massey, Feed Mill Superintendent Frank Powell, Feed Dispatch Manager Roland Lynch and Maintenance Manager Randall Bostick. Based on the parties' stipulations and the record as a whole, I find that **Bill Massey, Frank Powell, Roland Lynch and Randall Bostick** are **supervisors** within the meaning of Section 2(11) of the Act and **excluded from the unit** found appropriate herein. The parties stipulated to **include laboratory technician Casey Robinson** in any unit found appropriate.

ISSUE

Whether the appropriate unit should include dispatchers, drivers, and the feed order clerk.

POSITIONS OF THE PARTIES

The Employer, at the hearing and in its brief, contends that the drivers and dispatchers share a community of interest with the petitioned for employees, and that including drivers and dispatchers would create the traditional unit that is certified in feedmill operations citing El Campo Rice Milling, 73 NLRB 927 (1947). The Employer further contends that the feed order clerk, who also works as a dispatcher, should be included in the unit as she shares a community of interest with the petitioned-for employees.

The Petitioner argued at the hearing that the drivers, the dispatchers, and the feed order clerk are a separate unit and do not have a significant community of interest with the petitioned-for employees and should be excluded from the appropriate unit.

THE EMPLOYER'S OPERATIONS

The Employer presented as witnesses Live Production Manager Bill Massey, Feed Dispatch Manager Roland Lynch, and Director Of Human Resources David Tanner. The Employer operates a mill in Frankford, Delaware where it is engaged in the production and delivery of poultry feed. The Employer purchased the feed mill in 1988 from Cargill.

Bill Massey is in charge of the Frankford mill. Reporting to Massey are Feed Mill Superintendent Frank Powell, Feed Dispatch Manager Roland Lynch, and Maintenance Manager Randall Bostick. The mill currently employs four grain department employees, three panel employees, three pellet mill operators, two clean up employees, four mechanics, three dispatchers, seventeen drivers, a lab technician, and a feed order clerk.

Lynch supervises the dispatchers, the feed order clerk, and the drivers. Feed Mill Superintendent Powell supervises the panel operators, the pellet mill operators, the clean up employees, the grain department employees, and the lab technician. Bostick supervises the maintenance employees.

Corn, grains, and other raw materials are unloaded from trucks or rail cars in the mill by grain department employees. The grain is either stored or immediately processed in the hammer mill by grain department employees. The processed grain is transferred to the feed mill where panel operators "patch" the ingredients to make "mash" feed. The mash feed is then pelleted by pellet mill operators. A lab technician checks the product for quality and consistency in the panel and pellet area. Once the feed has left the pellet area, it is sent to feed delivery load-out bins. Dispatchers then take feed delivery tickets that have been prepared by the feed ordering clerk and match them up with drivers who deliver the feed.

Panel operators, pallet mill operators, dispatchers, the lab technician, grain department employees and the feed order clerk operate or monitor computers or computer controlled equipment. The panel operators and the pellet mill operators monitor computer control equipment that regulates the processes of the mill. The dispatcher uses a computer to monitor production in the feed mill facility. The grain department employees use computers to monitor grain storage tanks. The feed order clerk uses a computer to project the amount and kind of feed is going to be needed by the farms, which are the customers of the mill.

The dispatchers are paid \$9.30 to \$10.75 an hour. The maintenance employees are paid from \$10.25 to \$10.95 an hour. The panel operators and the pellet mill operators each receive \$9.80 an hour, and the grain department employees receive from \$8.50 to \$10.00 an hour. The feed order clerk is paid \$9.50 an hour. Drivers are not paid by the hour but by the ton and mileage. Drivers are paid ninety-three cents per ton during the day shift and ninety-six cents during the night shift.

The Employer has two time clocks at the Frankford mill. Drivers, dispatchers, and the feed order clerk punch one clock. Panel operators, pellet mill operators, grain department employees, clean up employees, maintenance employees, and the lab technician punch another time clock. There is a main break room in the feed mill area. There is also an area by the dispatch office where drivers go to receive their orders.

All of the mill employees, including drivers, dispatchers, and the feed order clerk receive the same health insurance, 401(k) retirement benefits, profit sharing, and disability benefits. All employees are given the same holidays off, and they are subject to the same work rules. The Employer provides uniforms for all employees free of cost, but it is not mandatory that employees wear them. The drivers and maintenance employees' uniforms consist of blue trousers and shirts. Feed mill and grain operation employees' uniforms consist of khaki trousers and shirts.

The Frankford mill runs on a 24 hour a day basis. Drivers work either the day shift, which is 6 a.m. to 6 p.m., or the night shift, which is 6 p.m. to 6 a.m. Panel and pellet mill operators work in three shifts--from 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., and 11 p.m. to 7 a.m. The maintenance employees' work schedule consists of staggered 10-hour day shifts that begin at either 5:30, 6:30, or 7:30 in the morning. Clean up employees work from 8 a.m. to 4:30 p.m., and the grain department employees work from 7 a.m. to 4:30 p.m.

DISPATCHERS

There are three dispatchers who work in the dispatch office which is located adjacent to the loading area. Dispatchers receive feed delivery tickets from the feed order clerk, which they use to decide how the delivery trucks are going to be loaded. When a delivery truck arrives at the mill loading area, it is the dispatcher who guides the driver by radio as the driver backs into the mill. Once the truck is in the mill, the dispatcher initiates the loading of the truck. Dispatchers also watch product inventory levels, and tell pellet mill operators what type of feed to produce depending on demand and inventory. Dispatchers are also responsible for the maintenance of the slide of the load-out bins. As a result, dispatchers are required to have daily contact with maintenance employees to fix the slide when it is broken. Dispatchers also have contact with clean up employees in the event of a spill on the load out scale.

FEED ORDER CLERK

The feed order clerk is responsible for communicating with farms and receiving their orders for feed. The feed order clerk then uses the order information obtained from the farms to project the mill's future production. Sixty percent of her job is receiving orders and projecting production. The feed order clerk also fills in as a dispatcher daily for one and one half-hours and when any dispatcher is on vacation or other leave.

DRIVERS

Drivers must report to the feed mill at the beginning of their shift. After they punch the time clock, they receive their first delivery order from the dispatch office. The only person that they have contact with up to that point is the dispatcher. The dispatcher initiates the loading of the truck and when the truck is full, the driver takes the feed to the grower's farm where the product is unloaded into feed bins. Once the feed has been delivered, the driver comes back to the mill for the next delivery. Drivers report to the feed mill approximately six times each shift.

The amount of time that drivers spend at the mill usually depends on whether there is a line of trucks waiting to back on to the load scale and be loaded and receive a delivery ticket from the dispatcher. If a driver comes back from a trip and there are no other trucks in line the driver's truck can be reloaded and back on the road in fifteen to thirty minutes. If there are other trucks in line when drivers arrive after delivering feed to a farm, they may get a cup of coffee and talk to other employees. If drivers do not understand the directions to a farm once they have been given a delivery ticket by the dispatcher, they ask for directions from another driver or the dispatcher. Sixty to seventy percent of their time is spent on the road away from the mill.

Drivers have contact with maintenance employees when they fuel their trucks and assist in loading when the slide door in the load out bin is stuck. From time to time, the maintenance employees have to go out to farms to do minor repairs to a truck. Also, sometimes a mill clean up employee has to assist a driver if there is a spill at a farm, and the driver usually assists in the clean up of the spill.

DISCUSSION AND ANALYSIS

While the Act does not fix specific standards for making unit determinations, the Board had developed a number of criteria to use in representation cases. Foremost is the principle that mutuality in wages, hours, and working conditions is the prime determinant of whether a given group of employees constitutes an appropriate unit. Continental Baking Co., 99 NLRB 777, 782 (1952). The key is whether the employees have a sufficient community of interest to be an appropriate unit. Tidewater Oil Co. v. NLRB, 358 F.2d 363, 366 (2d. Cir. 1964), cert. denied 380 U.S. 910 (1965). As stated by the Board in Continental Baking at 782-3:

In deciding whether the requisite mutuality exists, the Board looks to such factors as the duties, skills, and working conditions of the employees involved, and especially to any existing bargaining history.

The community of interest test also considers factors such as the degree of functional integration, Atlanta Hilton Towers, 273 NLRB 87 (1984); common supervision, Associated Milk Producers, 250 NLRB 1407 (1970); employee skills and functions, Phoenician, 308 NLRB 826 (1992); interchange and contact among employees, Associated Milk Producers, supra; and general working conditions and fringe benefits, Allied Gear & Machine Co., 250 NLRB 679 (1950).

There is no history of bargaining at the Frankford, Delaware facility.

The employees Petitioner seeks to include in the unit are supervised by the Feed Mill Superintendent and by the Maintenance Manager. The dispatchers, drivers, and feed order clerk, the employees that the Employer seeks to include in the unit, are supervised by the Feed Dispatch Manager.

Many of the feed mill employees have the same skills because they are required to fill in for each other. Panel operators have filled in for the lab technician. The lab technician has the skill to do the duties of panel operators, and he has filled in for panel operators. The feed order clerk has filled in for both the pellet mill operators and the panel operators. Similarly, the feed order clerk performs dispatcher work including loading trucks in the loading bin.

Contact between the groups proposed as part of the unit is as follows. The panel operators and pallet mill operators both assist the dispatcher in examining feed orders to decide the order that they want to run the feed mixes. The lab technician has contact with pallet mill operators and panel operators when he has to go into their areas in order to check the quality of the feed, and input feed formula changes into the panel. The feed order clerk works with the dispatcher to put the orders together. The clean-up personnel work all over the mill wherever they are needed. The drivers have no work-related interaction with the pellet operators, panel operators and grain department employees. Drivers interact with maintenance employees and clean-up personnel when these employees are sent out to the truck to fix a problem with the truck or clean-up a mess.

There has been employee interchange between the drivers and the feed mill production employees. Former employee Leroy Hudson worked as a driver until he lost his CDL then he was transferred to dispatch and later to maintenance. Current employee Wayne Littleton was a driver prior to 1988 and is now a clean up employee. Current employee Eric Lynch was formerly employed as a driver and is now a panel operator. Joe Gravner is a driver who was once a pellet mill operator. Two of the current three dispatchers were once drivers.

All employees at the mill have the same fringe benefits and are subject to the same work rules. The panel operators, pallet mill operators, grain department employees, lab technician, maintenance employees, clean up employees, are all paid on an hourly basis. Drivers are paid by the ton and by mileage. Drivers are required to possess a commercial driver's license.

CONCLUSION

DRIVERS

After examining the community of interest factors set forth above, I find that the drivers have an identifiable and distinctly separate community of interest from the unit petitioned for by the Petitioner. All of the petitioned for employees—panel operators, pallet mill operators, grain department, clean up personal and maintenance employees— work within the Employer's Frankford facility. By contrast the truck drivers' primary function is to transport products from the feed mill to the Employer's customers. The truck drivers spend most of their working time on the road, away from the Frankford mill, and there is relatively little interaction or contact between the petitioned-for employees and the drivers.

Moreover, the drivers are supervised by the feed dispatch manager, and, with the exception of the maintenance employees, all of the petitioned for employees are supervised by the feed mill superintendent. Drivers punch a different time clock from the petitioned-for employees. Drivers are required to have a commercial driver's license while none of the mill production or maintenance employees are so required. The record shows that there are material and substantial differences between the compensation systems for the petitioned-for employees and the drivers. The petitioned-for employees are paid by the hour. The drivers are paid by the ton and mileage. Even though the record shows that the earnings of the drivers are comparable to those of the petitioned-for employees— all drivers, unlike other employees, receive different pay depending on how much they haul and how far they go.

El Campo Rice Milling Co., supra, cited by the Employer for the proposition that the Board has historically included delivery drivers in overall mill production and maintenance units, is distinguishable from this case. In El Campo Rice Milling Co., the petitioner sought, inter alia, a unit of truck drivers and production and maintenance employees, and the Board found that the drivers had a community of interest with the production and maintenance employees. Here, the drivers, as stated above, do not share a community of interest with the employees in the petitioned-for unit and Petitioner does not seek to include drivers in the petitioned-for unit.

The fact that drivers have transferred to other positions in the Frankford mill does not undermine the conclusion that drivers do not have a community of interest with the petitioned-for unit. The record shows that these were permanent changes in the employees' status, a factor of much less significance than temporary interchange or transfers. Red Lobster, 300 NLRB 908 (1990).

Accordingly, **drivers** are **excluded** from the unit found appropriate herein and are **not eligible** to vote in the election.

DISPATCHERS

Concerning the dispatchers, I find that sufficient community of interest exists between dispatchers and the petitioned-for employees to warrant their inclusion in the unit. The dispatchers work within the Employer's Frankford facility along with the petitioned-for employees. The dispatchers have daily contact with the petitioned-for employees when panel operators and pallet mill operators assist the dispatchers in examining feed orders to decide the order in which they want to run the feed mixes. The dispatchers and most of the petitioned-for employees share common skills when they use the Employer's computer system in performing their duties. Also, the dispatchers are paid on an hourly basis, and the compensation is within the range of the employees included in the petitioned for unit.

Accordingly, the **dispatchers** are **included** in the unit found appropriate herein and are **eligible to vote** in the election.

FEED ORDER CLERK

I find that the feed order clerk is a plant clerical employee who has a sufficient community of interest with the petitioned-for employees to warrant her inclusion in the unit. Plant clerical employees are customarily included in a production and maintenance unit because

they generally share a community-of-interest with the employees in the plant wide unit. Raytec Co., 228 NLRB 646 (1977); Armour & Co., 119 NLRB 623 (1957). Office clericals, on the other hand, are excluded from a production and maintenance unit. Hygeia Coca-Cola Bottling Co., 192 NLRB 1127, 1129 (1971). A controlling factor in making this distinction is whether the disputed clericals perform work that is directly related to, and integrated with, the functional operation of the facility and the duties performed by other unit employees. Ives Business Forms, Inc., 263 NLRB 286, 289 (1982).

Unlike office clericals, the feed order clerk's duties are functionally integrated with the Employer's operation and the petitioned for employees' duties. The feed order clerk is responsible for communicating with farms and receiving their orders in order to project the mill's delivery needs. That projection is functionally integrated with the operation of the facility and it impacts unit employees like pellet mill operators as far as what type and how much feed they produce.

Likewise, the feed order clerk works within the facility as do the petitioned-for employees. The feed order clerk shares the same skills and regularly performs the jobs of employees who are included in the petitioned-for unit such as the pellet mill operators, the panel operators, and the dispatchers. As are the majority of the employees included in the petitioned-for unit, the feed order clerk is skilled at using the Employer's computer. Unlike the drivers, the feed order clerk is paid on an hourly basis and her compensation is within the range of salaries of the petitioned-for employees.

Accordingly, the **feed order clerk** is **included** in the unit found appropriate herein and is **eligible to vote** in the election.

Accordingly, I shall direct an election among employees in the following unit:

All full-time and regular part-time panel operators, pellet operators, grain department operators, clean up personnel, maintenance employees, laboratory technicians, dispatchers, and feed order clerks employed by the Employer at its Frankford, Delaware facility, excluding all other employees, drivers, office clerical employees, guards, and supervisors as defined by the Act.

420-2930; 420-2936; 420-2966